TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 35

UNITED STATES OF AMERICA, PETITIONER,

vs.

ABRAHAM MINKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 28, 1955

CERTIORARI GRANTED APRIL 11, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 35

UNITED STATES OF AMERICA, PETITIONER,

vs.

ABRAHAM MINKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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1 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. M-1609

THE UNITED STATES OF AMERICA

v.

ABRAHAM MINKER

[File endorsement omitted]

MOTION FOR ORDER TO REQUIRE WITNESS ABRAHAM MINKER TO APPEAR AND TESTIFY—Filed January 14, 1954

To the Honorable, the Judges of the United States District Court for the Eastern District of Pennsylvania:

The petition of W. Wilson White, Esquire, United States Attorney for the Eastern District of Pennsylvania, by G. Clinton Fogwell, Jr., Esquire, Assistant United States Attorney, and William B. Taffet, Esquire, District Counsel, Immigration and Naturalization Service, United States Department of Justice, Philadelphia,
2 Pennsylvania, for the United States of America, respectfully represents that:

1. Karl I. Zimmerman is and has been at all times since prior to September 8, 1953 an immigration officer, being the duly appointed District Director of Immigration and Naturalization, in charge of the Philadelphia District of the Immigration and Naturalization Service, United States Department of Justice.

2. The respondent, Abraham Minker, is and at all times since prior to September 8, 1953 has been a naturalized citizen of the United States.

3. On September 8, 1953 the aforesaid Karl I. Zimmerman did, pursuant to the authority vested in him by Section 235(a) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1225(a)), issue a subpoena directed to the respondent, requiring the appearance of the respondent at Room 711, Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, at 1:00 P.M. on September 16, 1953, to give testimony in the case of Abraham Minker. A copy of the said subpoena is attached hereto as Exhibit A.

4. The said subpoena was personnally served upon the respondent on September 10, 1953.

5. On September 14, 1953 respondent, by counsel, filed a motion with this Court to quash and set aside the aforesaid subpoena.

6. The said motion was presented to this Court on September 15, 1953, at which time an oral order was entered staying further action with reference to the subpoena pending decision by this Court on the motion to quash.

3 7. Hearing on the motion was heard by this Court on October 28, 1953.

8. By opinion and order dated November 25, 1953 this Court in the case of "In the Matter of Abraham Minker", No. M-1588, denied the aforesaid motion to quash and set aside the subpoena.

9. On December 2, 1953 the aforesaid Karl I. Zimmerman did, by registered mail, formally notify and command the respondent, Abraham Minker, to appear on January 5, 1954, at 10:00 A.M., in Room 711 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, in accordance with the provisions of the original subpoena served upon him. A copy of the said notice is attached hereto as Exhibit B.

10. The said notice was delivered by the United States postal authorities to the respondent, Abraham Minker, on December 4, 1953, and there was obtained from the said respondent at that time his written receipt for the said notification. A photostatic copy of the said receipt is attached hereto as Exhibit C.

11. The respondent, Abraham Minker, failed to appear on January 5, 1954, as notified and commanded.

WHEREFORE, your petitioner prays that this Honorable Court enter an order requiring the said respondent, Abraham Minker, to appear before Karl I. Zimmerman, District Director of Immigration and Naturalization, or such duly authorized representative as the said Karl I. Zimmerman may appoint or delegate, at Room 711 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, at such time as the said Karl I. Zimmerman

4 may designate, upon not less than 10 days written notice to the respondent, and to testify in the administrative proceedings captioned "In re Abraham Minker", pending before the Immigration and Naturalization Service, United States Department of Justice.

Respectfully submitted,

W. WILSON WHITE,
United States Attorney,

By: (S.) G. CLINTON FOGWELL, JR.,
Assistant United States Attorney.

WILLIAM B. TAFFET,
District Counsel,
Immigration and Naturalization Service,
Philadelphia, Pennsylvania.

Dated: January 14, 1953.

EXHIBIT "A" TO MOTION

United States of America

Department of Justice

Immigration and Naturalization Service
Philadelphia 6, Pennsylvania

Office of Origin: Philadelphia, Pa.

Subpena

2770-P-184007
Date September 8, 1953

In re Abraham Minker
To: Abraham Minker

5 Pursuant to the provisions of Section of the Immigration and Nationality Act, you are hereby commanded to attend and give testimony as set forth below, viz:

Place of appearance: Room 711, Lafayette Building, 5th & Chestnut Streets, Philadelphia 6, Pennsylvania.

Time you are required to appear: 1:00 P.M.

Date you are required to appear: Wednesday, September 16, 1953.

You are also commanded to produce and bring with you the following books, papers, and documents, viz:

(S.) KARL I. ZIMMERMAN.
(Name)

.....
(Title)

(Seal)

Return on Service of Subpena

I hereby certify that on the ..... day of ....., 19...., I served the above subpena on the witness named above by

(Name)

.....
(Title)

6 EXHIBIT "B" TO MOTION

United States Department of Justice

Immigration and Naturalization Service, Lafayette Building, 5th & Chestnut Sts., Philadelphia 6, Pa.

2770-P-18[illegible]07 ID

December 2, 1953

Registered Mail
Return receipt requested—Addressee Only
Mr. Abraham Minker
1954 Alsace Road
Reading, Pennsylvania

Dear Mr. Minker:

Reference is had to subpoena issued by me on September 8, 1953 and heretofore served upon you on September 10, 1953, requiring your appearance before an Officer of this Service on September 16, 1953.

By direction of District Judge George A. Welsh, United States District Court, Philadelphia, Pennsylvania, issued on September 15, 1953, no action was taken with reference to that subpoena pending disposition by the Court of a motion to quash the subpoena filed by your counsel.

The Court has now by its order of November 25, 1953 denied the motion to quash and set aside the subpoena and, accordingly, you are herewith formally notified and commanded to appear, in accordance with the provisions of the original subpoena served upon you, on January 5, 1954 at 10 A.M., in Room 711, Lafayette Building, 5th and Chestnut Streets, Philadelphia 6, Pennsylvania.

7 You are advised that your attendance is commanded in accordance with the above referred to subpoena in order that you may give testimony in connection with and relating to the possible institution of proceedings seeking the revocation of your naturalization in accordance with Section 340 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1451).

Very truly yours,

KARL I. ZIMMERMAN,
District Director.

Registered Mail
CC: Jacob Kossman, Esq.
1325 Spruce Street
Philadelphia, Pennsylvania
Return receipt requested

EXHIBIT "C"

Note: Exhibit "C" (registered letter return receipt) has been omitted.

8 [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

ORDER DIRECTING ABRAHAM MINKER TO APPEAR, ETC.—March 29, 1954

This matter coming on before this Court, before Welsh, J., upon motion of W. Wilson White, Esquire, United States Attorney, by G. Clinton Fogwell, Jr., Esquire, Assistant United States Attorney, and William B. Taffet, Esquire, District Counsel, Immigration and Naturalization Service, United States Department of Justice, Philadelphia, Pennsylvania, for the United States of America, and it appearing that the question of the legality of the issuance of the administrative subpoena involved herein was decided by this Court's opinion and order of November 25, 1953 in the Matter of Abraham Minker, No. M-1588, and it further appearing that the respondent was notified to appear before the District Director of Immigration and Naturalization at Philadelphia, Pennsylvania, and testify on January 5, 1954, and it further appearing that he has failed to so appear and testify,

It is, on this 29th day of March, 1954, ORDERED, DIRECTED AND DECREED that the respondent, Abraham Minker, appear before Karl I. Zimmerman, District Director of Immigration and Naturalization, or his duly authorized and delegated representative, at Room
9 711 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, at such time as the said Karl I. Zimmerman shall, upon not less than 10 days written notice, require, and testify in the administrative proceedings captioned "In re Abraham Minker", pending before the Immigration and Naturalization Service, United States Department of Justice.

(S.) GEO. A. WELSH, *J.*

10 [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION FOR ORDER ADJUDGING WITNESS ABRAHAM MINKER IN CONTEMPT—Filed May 27, 1954

To the Honorable, the Judges of the United States District Court for the Eastern District of Pennsylvania:

The petition of W. Wilson White, Esquire, United States Attorney for the Eastern District of Pennsylvania, by G. Clinton
11 Fogwell, Jr., Esquire, Assistant United States Attorney, and William B. Taffet, Esquire, District Counsel, Immigration and Naturalization Service, United States Department of Justice, Philadelphia, Pennsylvania, for the United States of America, respectfully represents that:

1. Karl I. Zimmerman is and has been at all times since prior to September 8, 1953 an immigration officer, being the duly appointed District Director of Immigration and Naturalization, in charge of the Philadelphia District of the Immigration and Naturalization Service, United States Department of Justice.

2. The respondent, Abraham Minker, is and at all times since prior to September 8, 1953 has been a naturalized citizen of the United States.

3. On September 8, 1953 the aforesaid Karl I. Zimmerman did, pursuant to the authority vested in him by Section 235(a) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1225(a)), issue a subpoena directed to the respondent, requiring the appearance of the respondent at Room 711, Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, at 1:00 P. M. on September 16, 1953, to give testimony in the case of Abraham Minker.

4. The said subpoena was personally served upon the respondent on September 10, 1953.

5. On September 14, 1953 respondent, by counsel filed a motion with this Court to quash and set aside the aforesaid subpoena.

6. By opinion and order dated November 25, 1953 this Court in the case of "In the Matter of Abraham Minker", No. M-1588,
12 denied the aforesaid motion to quash and set aside the subpoena.

7. A further notice was then served upon respondent Abraham Minker on December 4, 1953, requiring his appearance before Karl

I. Zimmerman, in accordance with the provisions of the original subpoena, on January 5, 1954.

8. The respondent, Abraham Minker, failed to appear on January 5, 1954, as notified and commanded.

9. By order dated March 29, 1954 this Court granted the motion of petitioner herein and directed that respondent Abraham Minker appear before petitioner Karl I. Zimmerman or his duly authorized and delegated representative, upon not less than ten days written notice, and testify in the administrative proceedings captioned "In re Abraham Minker" pending before the Immigration and Naturalization Service, United States Department of Justice.

10. Due and proper notice requiring Abraham Minker to appear in accordance with this Court's order of March 29, 1954 was given to the respondent, requiring his appearance on May 13, 1954 at 10:00 A.M. at the office of the Immigration and Naturalization Service, Room 711 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania, and the said respondent did fail to appear; all of which appears in more particularity in the affidavit of Elmer E. Wilson, annexed hereto and made a part hereof.

WHEREFORE, your petitioner prays that this Honorable Court enter an order requiring the said respondent, Abraham Minker, to appear before this Court at a time and date to be fixed and show cause, if any there be, as to why he should not be
13 adjudged in contempt of this Court's order of March 29, 1954.

Respectfully submitted,

W. WILSON WHITE,
United States Attorney,
By: (S.) G. CLINTON FOGWELL, JR.,
Assistant United States Attorney,
WILLIAM B. TAFFET,
District Counsel,
Immigration and Naturalization Service,
Philadelphia, Pennsylvania.

Dated: May 27, 1954.

AFFIDAVIT OF ELMER E. WILSON

STATE OF PENNSYLVANIA,
County of Philadelphia, ss.

I. Elmer E. Wilson, being duly sworn according to law, depose and say that:

1. My name is Elmer E. Wilson.

2. I am a duly appointed and empowered immigration officer of the Immigration and Naturalization Service, United States Department of Justice.

3. I have been officially assigned to the Philadelphia District of the said Immigration and Naturalization Service since January 20, 1954.

14 4. As part of my official duties I was directed to investigate the case of Abraham Minker of Reading, Pennsylvania, with particular respect to the question of whether the said Abraham Minker's naturalization had or had not been illegally and improperly obtained.

5. During the course of my official investigation of the said Abraham Minker I have met him, know his physical appearance and believe I would immediately recognize him if I saw him again.

6. In connection with my official duties and pursuant to an order entered in the United States District Court for the Eastern District of Pennsylvania in the case of United States of America vs. Abraham Minker, No. M-1609, dated March 29, 1954, I did, on April 21, 1954, cause to be written and deposited in the United States mails a letter addressed to Abraham Minker, 1954 Alsace Road, Reading, Pennsylvania, requesting the said Abraham Minker to appear at the office of the Immigration and Naturalization Service, Room 711, Lafayette Building, Fifth and Chestnut Street, Philadelphia, Pennsylvania, at 10:00 a. m. on May 13, 1954.

7. The said letter was sent by registered mail, return receipt requested, deliver to addressee only.

8. I did thereafter receive a return receipt from the post office department indicating that personal delivery of the aforementioned letter had been made to Abraham Minker on April 23, 1954.

9. I was present at the office of the Immigration and Naturalization Service, Room 711, Lafayette Building, Fifth and Chestnut Streets, Philadelphia, Pennsylvania, continuously from 8:30 a. m. to 12:30 p. m. and from 1:00 p. m. to 5:00 p. m. on May 13, 1954.

15-16 10. The said Abraham Minker did not appear at the office of the Immigration and Naturalization Service, Room 711, Lafayette Building, Fifth and Chestnut Streets, Philadelphia, Pennsylvania, on May 13, 1954 as requested.

(S.) ELMER E. WILSON.

Subscribed and sworn to before me this 26th day of May, 1954.

(S.) CHARLES HALPERN,
Notary Public.

My Commission Expires Feb. 10, 1955.
(Seal.)

[File endorsement omitted]

N THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

RDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE ADJUDGED IN CONTEMPT—May 27, 1954

And now, to wit, this 27th day of May, 1954, upon consideration f the within petition for a rule to show cause, it is

ORDERED and DECREED that the respondent, Abraham Minker, how cause, if any there be, why he should not be adjudged in ontempt of this Court's order of March 29, 1954, requiring him o appear and testify before petitioner Karl I. Zimmerman, or his uly authorized and delegated representative, and fixes the 3rd ay of June, 1954, at 10 A. M., at the United States Court House, th and Market Streets, Philadelphia, as the time and place for he hearing on the said petition.

(S.) GEO. A. WELSH,
J.

8 [File endorsement omitted]

N THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

M-1609

UNITED STATES OF AMERICA

vs.

ABRAHAM MINKER

JUDGMENT—June 3, 1954

AND NOW, to wit, this 3rd day of June, 1954, upon consideration of the Motion for Order adjudging witness ABRAHAM MINKER in contempt, and after hearing in open Court, and it having been established to the Court's satisfaction that the witness ABRAHAM MINKER did receive due and proper notice of this Court's Order of March 29, 1954, requiring him to appear before Petitioner Karl I. Zimmerman, or his duly authorized and delegated representative, and having further received due and proper notice from the aforesaid Karl I. Zimmerman, requiring his appearance before the said Karl I. Zimmerman, on May 13, 1954, and having failed to

appear on May 13, 1954, it is ORDERED, ADJUDGED AND DECREED that the said witness ABRAHAM MINKER is adjudged in contempt of this Court's order of March 29, 1954, and it is further ORDERED, ADJUDGED AND DECREED that a fine of Five Hundred ($500.00) Dollars be imposed, and it is further ORDERED, ADJUDGED AND
19 DECREED that on application of ABRAHAM MINKER a stay of execution of payment of the aforesaid fine is granted, pending disposition of this case on appeal by the United States Court of Appeals for the Third Circuit, providing notice of appeal is filed with this Court within ten (10) days hereof.

By the Court:

(S.) GEO. A. WELCH,
J.

[File endorsement omitted]

20 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

NOTICE OF APPEAL—Filed June 4, 1954

Name and address of appellant, Abraham Minker, 1954 Alsace Road, Reading, Pennsylvania.

Name and address of appellant's attorney, Jacob Kossman, Esq., 1325 Spruce Street, Philadelphia, Pennsylvania.

Offense: Contempt of Court.

Concise statement of judgment or order, giving date, and any sentence: $500.00 fine imposed on appellant on June 3, 1954.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the third Circuit from the above-stated judgment.

(S.) JACOB KOSSMAN,
Appellant's Attorney.

June 4, 1954.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA DIVISION

[Title omitted]

21 DOCKET ENTRIES—Filed June 4, 1954

1. Indictment or information for Motion for order adjudging defendant in contempt filed May 27th, 1954.

2. Hearing sur rule to show cause. June 3rd, 1954.

6. Verdict or finding of guilt—Defendant adjudged in contempt June 3rd, 1954.

7. Judgment—(with terms of sentence) or order. Fine of $500.00. Entered June 3rd, 1954.

8. Notice of appeal filed—June 4th, 1954. Dated June 4th, 1954.

Attest: J. A. COMEY,
Clerk.

22 IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA, ss:

I, LEO A. LILLY, Clerk, United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed copy of the supplemental docket entries is a true copy, and I further certify that the annexed and foregoing are the original papers filed in the matter of: United States v. Abraham Minker, M-1609: 9. Stipulation of counsel that record in M-1588 be made a part of record in this case, and order of Court approving same.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia June 10, 1954.

_____
Clerk.

Received the aforementioned paper from the Clerk, U. S. District Court, Eastern District of Pennsylvania: June 10, 1954, together with the record in M-1588 (Papers numbered 1, 2 and 3).

_____
Clerk, U. S. Court of Appeals, Third Circuit.

23 [File endorsement omitted].

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

STIPULATION—Filed June 9, 1954

It is hereby stipulated and agreed by counsel for the respective parties, that the record in the Matter of Abraham Minker, No. M-1588, be made a part of the record in this case.

(S.) G. CLINTON FOGWELL, JR., *A.U.S.A.*
for United States Attorney.
(S.) JACOB KOSSMAN,
Attorney for Abraham Minker.

So Ordered:—Filed June 9, 1954.

(S.) Geo. A. Welsh, *J.*

[File endorsement omitted]

24 In the United States District Court for the Eastern District of Pennsylvania

No. M-1588

In the Matter of
Abraham Minker

Jacob Kossman

Docket Entries

1953

1. Sept. 11. Motion of Abraham Minker to quash and set aside subpoena, filed.

Oct. 28. Argued sur motion to quash and set aside subpoena. CAV.

2. Nov. 25. Opinion, Welsh, J., denying motion to quash set aside subpoena, filed.

3. Nov. 25. Order of Court denying motion to quash and set aside subpoena filed 11-27-53. Noted and Notice Mailed.

[File endorsement omitted]

25 In United States District Court for the Eastern District of Pennsylvania

No. M-1588

In the matter of
Abraham Minker

Motion to Quash and Set Aside Subpoena—Filed September 11, 1953

The defendant, Abraham Minker, a citizen of the United States, by his attorney, Jacob Kossman, moves that the subpoena served upon him requiring him to attend and give testimony in re *himself* be quashed and set aside for the following reasons:

1. The subpoena does not disclose the nature of the investigation.
2. There is no authority or jurisdiction for an Immigration Officer to subpoena the attendance and testimony of a person who is a citizen of the United States against himself.
3. The provisions of the subpoena are unreasonable and oppressive.

(S.) Jacob Kossman,
Attorney for Petitioner.

26-27 Subpoena. Omitted. Printed side page # 4 ante.

[File endorsement omitted]

28. IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. M-1588

In the Matter of
Abraham Minker

OPINION—November 25, 1953

Welsh, J.

This is a motion to quash and set aside a District Director of Immigration and Naturalization subpoena commanding the petitioner, Abraham Minker, to appear and testify in a manner concerning himself.

Petitioner's counsel, in the first instance, contends that the subpoena authority contained in Section 235 (a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1225 (a), only extends to matters involving aliens and aliens and citizens coming into the United States and has no application to citizens residing in the United States. The contention, we think, is not well founded.

The pertinent language of Section 235 (a) provides: " * * * The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers,
29 and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the service, and to that end may invoke the aid of any court of the United States * * *" The quoted language, we think, is a clear expression of the Congressional intent. The intent is to grant to the Attorney General and the immigration officers subpoena power in matters relating to aliens and aliens and citizens coming into the United States and in matters which are material and relevant to the enforcement of the Act and the administration of the Service. Specifically, the intent, insofar as the instant case is concerned, is to grant the power to subpoena in matters which are material and relevant to the enforcement of the Act, which means of necessity matters material and relevant to the enforcement of all of the provisions of the Act, including the provision of the Act the Service is attempting to enforce here, namely, Section 340, 8 U. S. C. 1451, relating to revocation of naturalization.

Obviously, said Section deals with citizens residing in the United States as it is concerned with the revocation of the citizenship of a person who has been naturalized. Petitioner and his counsel have knowledge of the fact that the Immigration and Naturalization Service is attempting to revoke petitioner's naturalization obtained in 1945 and that the instant subpoena was issued in aid of the investigation being conducted to accomplish that purpose.

A comparison of the prior statute, 8 U. S. C. 152, and the present statute, 8 U. S. C. 1225 (a), supports the conclusion reached above that it was the intent of Congress by expanding the language in the present statute to broaden the subpoena power of the Attorney General and the Immigration and Naturalization Service so as to include the issuance of a subpoena not only in matters involving aliens and aliens coming into the United States but also in matters material and relevant to the enforcement of each and every provision of the Act of 1952. In 8 U. S. C. 152 it is provided: "* * * Any District Director of Immigration and Naturalization designated by the Commissioner or any inspector in charge shall also have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers and documents touching the right of any alien, to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; * * *" After using the words "the privilege of any person to enter, reenter, reside in, or pass through the United States", 8 U. S. C. 1225 (a) adds the words, "or concerning any matter which is material and relevant to the enforcement of this Act".

Finally, we attach no significance to the fact that the subpoena provision of the Act of 1952 is placed in that portion of the Act dealing with the inspection of aliens, in the light of the Congressional intent to extend the subpoena power to matters material and relevant to the enforcement of each and every provision of the Act, including Section 340 relating to revocation of naturalization.

Secondly, petitioner's counsel contends that the present subpoena provision, Section 235 (a), should not be construed so as to require the attendance and testimony of the party himself. The basis of the contention is that Section 235 (a) uses the word "witnesses" and a party does not fall within that category. This contention, we think, is likewise, not well founded.

Section 16, 8 U. S. C. 152, in effect prior to the enactment of Section 235 (a), 8 U. S. C. 1225 (a), likewise used the word "witnesses" and the cases decided thereunder held that said word was sufficiently broad to include the party (the alien) himself. Loufakis v. United States, 81 F. 2d 966; United States v. Parson, 22 Fed. Supp. 149, reversed on other grounds but sustained as to the aforementioned proposition in Graham v. United States, 99 F. 2d 746;

In re Estes, 86 Fed. Supp. 769 and Yanish v. Wixon, 81 Fed.
31 Supp. 499. Thus, the same construction, we feel, should be placed on the present statute.

It is argued by counsel for petitioner that the strict limitation on the scope of administrative investigations, Jones v. S.E.C., 298 U.S. 1, supports his contention that the authority to subpoena "witnesses" does not include the authority to subpoena the party himself. The answer to this argument is that a more liberal view was adopted by the Court in 1950 in the case of United States v. Morton Salt Company, 338 U.S. 632. That case shows that the power to conduct administrative investigations and incidental thereto the power to issue subpoenas to compel appearance and testimony in connection with those investigations were not limited to the same extent that judicial inquiries were limited. The adoption of this more liberal view was undoubtedly the result of increased experience with administrative investigations.

The other argument of petitioner's counsel is that if Congress wanted to grant the Service power to subpoena the party himself it could have done so by using the word "persons" instead of the word "witnesses". See Defense Production Act of 1950. In this connection we point to the fact that the subpoena provisions of the Federal Trade Commission Act and the Fair Labor Standards Act contain the word "witnesses", and it can hardly be contended that with respect to the enforcement of those Acts the right of subpoena does not flow against the person under investigation. Further, it is our thought that the failure of Congress to use the word "persons" in the subpoena provision of the Act of 1952 does not foreclose a finding that "witnesses", the word used by Congress, includes the party himself. Indeed, as has been seen above, because of the construction placed on the prior subpoena provision, 8 U.S.C. 152, and because of the now more liberal view with
32 respect to the scope of administrative investigations, the word "witnesses" as used in the Act of 1952 includes the party himself.

For reasons stated herein the motion to quash and set aside the subpoena commanding the petitioner to appear and testify in a matter concerning himself will be denied.

An order pursuant to the foregoing opinion will be entered.

In closing, it is noted that the opinion herein does not affect the right of the petitioner at the time his testimony is sought to be taken before the immigration officer to assert any right he may have under the Fifth Amendment to the Federal Constitution.

NOTE: In the quoted language of the Act on page 1 of this opinion the word used in the printed U.S.C.A. is "Chapter". In the United States Statutes at Large the word "Act". We have considered the

wording of the United States Statutes at Large as the authentic version.

33 [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Misc. No. M-1588

In the Matter of Abraham Minker

ORDER—November 25, 1953

Before WELSH, *J.*

AND NOW, to wit: November 25th, 1953, in accordance with the Opinion of the Court, it is ORDERED that the motion to quash and set aside a District Director of Immigration and Naturalization subpoena in the above matter be and the same is hereby Denied.

By the Court:

Attest:

J. A. COMEY,
Deputy Clerk.

34 [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,347

UNITED STATES

v.

ABRAHAM MINKER, APPELLANT

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Argued October 14, 1954

Before GOODRICH, KALODNER and HASTIE, *Circuit Judges*

OPINION OF THE COURT—Filed December 1, 1954

By HASTIE, *Circuit Judge.*

The contempt conviction which we review on this appeal resulted from the refusal of the appellant, Abraham Minker, a naturalized

citizen who has resided in this country for more than forty years, to honor a subpoena issued by the District Director of Immigration and Naturalization requiring appellant to appear and testify as a witness in an administrative proceeding entitled "In re Abraham Minker".

35 From the beginning it has been agreed that this administrative proceeding was the opening inquiry in a course of official action directed toward the denaturalization of Minker.[1] If probable cause for denaturalization should be found in this administrative proceeding, the appropriate officer of the Immigration and Naturalization Service would then submit his certificate and affidavit of probable cause to a United States Attorney. In normal course, the United States Attorney, armed with that affidavit and such evidence as the immigration authorities had assembled in reaching the administrative decision, would proceed, as authorized by statute to institute a formal court action against Minker seeking a decree depriving him of citizenship.

The question before us is whether the immigration officer had authority to subpoena Minker to testify in the administrative first stage of official action toward his denaturalization. The government says that Section 235(a) of the Immigration and Nationality Act of 1952[2] gives immigration officers such subpoena power.

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[1] After the issuance of the subpoena, a letter was sent appellant advising him that his attendance was commanded in order that he might give testimony "in connection with and relating to the possible institution of proceedings seeking the revocation of your naturalization in accordance with Section 340 of the Immigration and Nationality Act of 1952."

[2] 66 Stat. 198, 8 U.S.C. § 1225 (a). The subsection reads as follows:

> ". . . The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena

That section provides that ". . . any immigration officer . . .
36 shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers. . . ." It also makes this power applicable to the obtaining of testimony "concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service. . . ." Certainly, the proceeding "In re Minker" was such a matter. The doubtful question is whether Abraham Minker, in his relation to "In re Minker" is a "witness" within the meaning of Section 235(a).

In our ordinary use and understanding of language, witnesses and parties are different categories of participants in an administrative or judicial inquiry. Yet, those so interested in a proceeding as to be parties do at times give evidence as witnesses. Therefore, it may be unclear on the face of a legislative enactment concerning witnesses whether parties are included. This ambiguity has appeared and has proved troublesome in cases arising under statutes which authorize the taking of depositions of "witnesses". It has frequently been held that parties and other interested persons are not covered by such statutes. *In re Denning*, 1948, 44 Del. 470, 61 A.2d 657; *Hamilton Co.* v. *Goring*, 1940, 65 R.I. 459, 16 A.2d 334; *Hubbard* v. *Haynes*, 1949, 189 Tenn. 335, 225 S.W.2d 252. We cite these cases principally for their teaching that "witness" is likely to be an ambiguous word, the meaning of which "is to be determined in each case by the attendant circumstances and context, and that there is no safe general rule that can be applied universally". See *Hubbard v. Haynes, supra*, at 338, 225 S.W.2d at 253. Approaching this case that way we find three considerations which lead us to the conclusion that "witnesses" as used in Section 235(a) should not be construed to include such a party as appellant.

In 1952 Congress rewrote the entire body of our statutory immigration and nationality laws. Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U.S.C., 1952 ed., ch. 12. The provision we now are construing is new language in the 1952 Act. The
37 section in which it appears is only one of several scattered throughout the Act in which some provision is made concerning witnesses. Therefore, it is significant that in several such sections where Congress wished to make a provision as to witnesses applicable to parties in interest, it said so. In prescribing naturaliza-

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issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

tion procedure, Congress granted the subpoena power in these terms:

> "The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization . . . For such purposes any such employee . . . is authorized . . . to require by subpena the attendance and testimony of witnesses, including petitioner, . . ." 8 U.S.C., 1952 ed. § 335(b).

Similar precision appears in the regulation of deportation procedure:

> "A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses . . ." 8 U.S.C., 1952 ed., § 242(b).

Almost identical language appears in connection with the exclusion of aliens:

> "A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses." 8 U.S.C., 1952 ed., § 236(a).

Again, it is provided:

> "The Attorney General shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, including the petitioner, . . ." 8 U.S.C., 1952 ed., § 336(d).

In these circumstances the failure to make any equivalent amplification of the witness category in Section 235(a) is some indication that none was intended.

The second consideration is predicated on the fact that in Section 340 of the new immigration statute, Congress has been careful to outline a judicial procedure which must be followed to accomplish denaturalization. 8 U.S.C., 1952 ed., § 1451. Specific provision is made for an adversary proceeding to be instituted by a United States Attorney in an appropriate court. Grounds for denaturalization must be stated in a formal charge and this document must

be served upon the defendant, who shall have 60 days in which to answer. A trial follows. Congress must have believed that the administration of justice in these serious cases would be facilitated by safeguards inherent in such procedure. But, as one district judge has pointed out in a case indistinguishable from ours, "If the subpenas here were allowed to stand, the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action, and the provisions for personal notice, sixty-day time period to answer in section 340(b) of the Act would be empty words." *Application of Barnes*, N.D. N.Y. 1953, 116 F. Supp. 464, 469. Accord, *In re Oddo*, S.D. N.Y. 1953, 117 F. Supp. 323. Of course Congress may have intended to minimize the safeguards afforded by Section 340 by compelling the citizen to be a witness against himself in an administrative pretrial. But we think such intention sufficiently unlikely to make a court reluctant to find it by an unnecessarily broad interpretation of the subpoena power conferred by Section 235(a).

Finally, we think the character of denaturalization is such that in choosing between reasonable alternative constructions of
39 statutory language, a court should incline toward the construction favorable to the person whose status is put in jeopardy. The strict construction of criminal statutes is an accepted policy of our jurisprudence designed to protect those who live under our law from possible injustice. Technically, we are not administering the criminal law in this case. But we are concerned with the administration of a sanction which in effect is gravely penal. A fine or imprisonment is the normal criminal penalty. But loss of citizenship is a far graver penalty than most fines and many prison sentences. The Supreme Court has recognized this by requiring a strictness of proof in denaturalization cases which approximates that imposed in criminal cases. *Schneiderman* v. *United States*, 1943, 320 U.S. 118; *Baumgartner* v. *United States*, 1944, 332 U.S. 665. And a court of appeals has recently held that the rule of strict construction of penal statutes applies to legislation of "punitive impact" very much like denaturalization. *Mangaoang* v. *Boyd*, 9 Cir. 1953, 205 F.2d 553. We think this is sound and salutary doctrine. Its application here is the third factor which leads us to the construction urged by appellant.

We conclude that a citizen confronted with an administrative proceeding which poses a challenge to his right to retain citizenship is not to be regarded as a "witness" within the meaning of Section 235(a) or required under that section to appear and testify against himself. We note that the learned district judge in this case was careful to say that he was not deciding what the appellant might be required to testify but merely that, in response to the subpoena, he must submit himself as a witness. However, we

think the statute does not contemplate that he must be a witness at all in an administrative inquiry instituted with a view to depriving him of citizenship. That much we decide, but no more. We neither consider nor intimate any opinion upon any of the countless other situations in which immigration officers may undertake to require by subpoena the appearance and testimony of
40 interested persons in administrative inquiries. E.g., the problem presented, under a statute now repealed, in *Loufakis* v. *United States*, 3 Cir. 1936, 81 F.2d 966.

The judgment will be reversed.

41 IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,347

UNITED STATES OF AMERICA

vs.

ABRAHAM MINKER, APPELLANT

On Appeal from the United States District Court for the Eastern District of Pennsylvania

Present: GOODRICH, KALODNER AND HASTIE, *Circuit Judges.*

JUDGMENT—December 1, 1954

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed.

Attest:

IDA O. CRESKOFF,
Clerk.

December 1, 1954.

[File endorsement omitted.]

42-51 Petition for rehearing covering 9 pages filed December 14, 1954 omitted from this print.

It was denied, and nothing more by order January 6, 1955.

52-55 IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed January 6, 1955

Present: BIGGS, *Chief Judge*, and MARIS, GOODRICH, KALODNER, STALEY and HASTIE, *Circuit Judges*.

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By the Court:

WILLIAM H. HASTIE,
Circuit Judge.

Dated: January 6, 1955.

[File endorsement omitted.]

56 Clerk's Certificate to foregoing transcript omitted in printing.

57-58 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. ——

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,
IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 7, 1955.

HAROLD H. BURTON,
Associate Justice of the Supreme Court of the United States.

Dated this 29th day of January, 1955.

59 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 625

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 11, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 351135 47